



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 06432-99
12 January 2000

SGT [REDACTED] USMC
[REDACTED]

Dear Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 January 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in your case, dated 13 October 1999, and the advisory opinion from HQMC (JAM4), dated 27 August 1999, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB and the advisory opinion. You assert you were told at your nonjudicial punishment (NJP) the reason you received NJP for lateness to class, while other students who had been late were required to stand weekend duty, was that they showed remorse, but you did not. The Board found this would be a valid basis for treating you differently. They were unable to find the disrespect charges were, as you assert, added solely to make the lateness charge carry more weight. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

6432-99

IN REPLY REFER TO:
1610
MMER/PERB
OCT 13 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
SERGEANT [REDACTED] USMC

Ref: (a) Sergeant [REDACTED]'s DD Form 149 of 12 Jul 99
(b) MCO P1610.7D w/Ch 1

Encl: (1) SJA to CMC Comment 1070 JAM4 of 27 Aug 99

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 6 October 1999 to consider Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 960918 to 961112 (TD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner details the events and circumstances surrounding the nonjudicial punishment (NJP) recorded in the fitness report and offers his belief that the entire situation never occurred.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The bottom line is that the NJP occurred and was correctly recorded via the Performance Evaluation System. Unless and until that action is set aside or otherwise eliminated from the petitioner's record, removal of the fitness report is simply not warranted.

4. The Board's opinion, based on deliberation and secret ballot vote is that the contested fitness report should remain a part of Sergeant [REDACTED]'s official military record.

5. The enclosure is furnished to assist in adjudicating the petitioner's request for setting aside of the NJP.

(3) AOC

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
SERGEANT [REDACTED], [REDACTED] SMC

6. The case is forwarded for final action.

[REDACTED]
[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps

1070
JAM4
27 AUG 1999

SJA TO CMC COMMENT on MMER r/s of 9 Aug 99

Subj: PERFORMANCE EVALUATION REVIEW BOARD CASE OF SERGEANT
[REDACTED], [REDACTED] 331 U.S. MARINE CORPS

Ref: (a) Manual for Courts-Martial, United States
(1995 ed.), Part V

1. We are asked to comment on Petitioner's request that his fitness report covering the period from 18 September 1996 to 12 November 1996 be removed from his official military records. Petitioner also requests that the NJP he received during this reporting period be set aside.

2. Background. According to the subject fitness report, Petitioner received NJP for violating Article 86, UCMJ, by failing to go to his appointed place of duty at the time prescribed, and for violating Article 91, UCMJ, by being disrespectful towards a Gunnery Sergeant. There is no indication in the records provided that Petitioner appealed the NJP.

3. Analysis. Under the reference, the NJP authority may impose punishment when he believes the preponderance of the evidence establishes that the accused committed the offense charged. Absent clear evidence of an abuse of discretion, the NJP authority's findings should remain undisturbed. Petitioner has failed to demonstrate that the NJP authority abused his discretion in any way. There is no evidence in the records provided to indicate that the question of Petitioner's guilt was not objectively and thoroughly considered by the NJP authority before imposing punishment. Furthermore, the punishment imposed upon Petitioner (reduction to E-4) was well within legal limits.

4. Conclusion. Accordingly, based on the information available, we recommend that the requested relief be denied.

[REDACTED]
[REDACTED]
Major, U.S. Marine Corps
Assistant Head
Military Law Branch
Judge Advocate Division